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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[AMS-DA-10-0055]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the General Specifications for Dairy Plants Approved for United States Department of Agriculture (USDA) Inspection and Grading Service (General Specifications) by raising the maximum allowable somatic cell count in producer herd goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter. This will ensure that goat milk can continue to be shipped and recognizes that goats have a need for different regulatory limits for somatic cells than cows. In addition this document eliminates mandatory

sediment testing on producer milk except for milk in cans. The requirement for sediment testing has become outdated and is no longer needed.

DATES: Effective: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Chief, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720-9382 or email Susan.Sausville@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The final rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions will not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

These amendments will not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost to those utilizing the program will not increase.

C. Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in Part 58 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581-0110 under the Paperwork Reduction Act (44 U.S.C. chapter 35). This action will not impose any additional reporting or recordkeeping requirements on large or small dairy processors.

Background and Changes

The change for goat milk raises the maximum allowable somatic cell count from 1,000,000 to 1,500,000 cells per milliliter. Due to inherent differences between cows and goats, goat milk with a somatic cell count of 1,500,000 cells per milliliter can be produced from a healthy, non-mastitic udder and therefore is quality milk. The change for goat milk will ensure its continued shipment and recognizes that goats have a need for different regulatory limits for somatic cells than cows. The need for a separate standard for goat milk was recognized by the National Conference on Interstate Milk Shipments (NCIMS), and a proposal to raise the somatic cell count in goat milk was approved at the 2009 NCIMS Conference. This change will align the

General Specifications for Dairy Plants Approved for USDA Inspection and Grading with the Grade A requirements for goat milk.

The change on sediment testing eliminates the provisions imposing mandatory sediment testing on producer milk except for milk in cans. The requirement for sediment testing has become outdated and is no longer needed. The regulations governing sediment testing were promulgated in 1975 before dairy operations started using contained milking, storage, and transportation facilities for commercial milk production. The change in sediment testing is based on the fact that the majority of milk sold in the United States is produced using automated milking equipment and systems that provide no opportunity for sediment contamination. Because milk production predominantly occurs in clean, modern facilities, using sealed lines, storage tanks and sanitary pumps with no “manual handling” sediment testing is no longer needed except for those producers using cans for milk collection where there is a risk of sediment contamination.

Public Comments

On December 23, 2012, the Department published a proposed rule (76 FR 80280) to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The public comment period closed February 23, 2012. One comment was received from the Chairperson of the Other Species Committee of the National Conference on Interstate Milk Shipments (NCIMS) in support of the proposed amendments.

List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58, Subpart B, is amended as follows:

PART 58 - [AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621-1627.

2. Amend § 58.133 by revising paragraphs (b)(5) introductory text, (b)(5)(ii), and (b)(6) to read as follows:

§ 58.133 Methods for quality and wholesomeness determination.

* * * * *

(b) * * *

(5) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,500,000 per ml. for goat milk), the following procedures shall be applied:

* * * * *

(ii) Whenever two out of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,500,000 per ml. for goat milk), the appropriate State regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 750,000 per ml. (1,500,000 per ml. for goat milk).

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b)(5)(ii) of this section. If this sample also exceeds 750,000 per ml. (1,500,000 per ml. for goat milk), subsequent milkings shall not be accepted for market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd

milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,500,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

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3. Amend § 58.134 by revising the section heading and paragraphs (b), (c) introductory text, (d), and (e) and removing paragraphs (c)(1) and (2).

The revisions read as follows:

§ 58.134 Sediment content for milk in cans.

* * * * *

(b) *Sediment content classification.* Milk in cans shall be classified for sediment content, regardless of the results of the appearance and odor examination required in § 58.133(a), as follows:

USDA SEDIMENT STANDARD

No. 1 (acceptable)--not to exceed 0.50 mg. or equivalent.

No. 2 (acceptable) -- not to exceed 1.50 mg. or equivalent.

No. 3 (probational, not over 10 days) -- not to exceed 2.50 mg. or equivalent.

No. 4 (reject) -- over 2.50 mg. or equivalent.

(c) *Frequency of tests.* At least once each month, at irregular intervals, one or more cans of milk selected at random from each producer shall be tested.

(d) *Acceptance or rejection of milk.* If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified No. 4 the milk shall

be rejected: *Provided that*, If the shipment of milk is commingled with other milk in a transport tank the next shipment shall not be accepted until its quality has been determined before being picked up; however, if the person making the test is unable to get to the farm before the next shipment it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, all cans shall be tested. Producers of No. 3 or No. 4 milk shall be notified immediately and shall be furnished applicable sediment discs and the next shipment shall be tested.

(e) *Retests*. On test of the next shipment all cans shall be tested. Milk classified as No. 1, No. 2, or No. 3 may be accepted, but No. 4 milk shall be rejected. The producers of No. 3 or No. 4 milk shall be notified immediately, furnished applicable sediment discs and the next shipment tested. This procedure of retesting successive shipments and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for not more than 10 calendar days. If at the end of this time all of the producer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2), it shall be rejected.

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Dated: May 22, 2012

David R. Shipman

Administrator

Agricultural Marketing Service

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